

ASSEMBLY BILL

No. 82

Introduced by Assembly Member Calderon

January 4, 2005

An act to amend Section 3701.5 of, and to add Article 2.3 (commencing with Section 3737) to Chapter 4 of Part 1 of Division 4 of, and to add Sections 3741.1 and 3748 to, the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 82, as introduced, Calderon. Workers' compensation: private self-insurance groups.

Existing law authorizes an employer to secure the payment of workers' compensation by securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers upon proof satisfactory to the director of the ability to self-insure and to pay any compensation that may become due to employees.

Existing law establishes the Self-Insurers' Security Account for purposes related to the payment of the workers' compensation obligations of self-insurers.

This bill would impose various requirements on private self-insured groups, including requirements with respect to the net worth of the members of these groups, the reporting of financial and other information, security deposits, insurance, membership, and administration. The bill would create the Self-Insured Groups' Security Fund for specified purposes related to the payment of the workers' compensation obligations of private self-insured groups. The bill would require that the assets in this fund be maintained separately

from those in the Self-Insurers' Security Fund, and that assessments be levied on private self-insured groups for placement in this fund.

The bill would require the Director of Industrial Relations to adopt reasonable rules and regulations as necessary to effectuate the provisions regulating private self-insured groups.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3701.5 of the Labor Code is amended to
2 read:

3 3701.5. (a) If the director determines that a private
4 self-insured employer, *or a private group of self-insured*
5 *employers*, has failed to pay workers' compensation as required
6 by this division, the security deposit shall be utilized to
7 administer and pay the employer's *or group's outstanding*
8 compensation obligations.

9 (b) If the director determines the security deposit has not been
10 immediately made available for the payment of compensation,
11 the director shall determine the method of payment and claims
12 administration as appropriate, which may include, but is not
13 limited to, payment by a surety that issued the bond, or payment
14 by an issuer of an irrevocable letter of credit, and administration
15 by a surety or by an adjusting agency, or through the
16 Self-Insurers' Security Fund *or the Self-Insured Groups' Security*
17 *Fund*, or any combination thereof.

18 (c) If the director determines the payment of benefits and
19 claims administration shall be made through the Self-Insurers'
20 Security Fund *or the Self-Insured Groups' Security Fund*, the
21 fund shall commence payment of the private self-insured
22 employer's obligations for which it is liable under Section 3743
23 *or 3748* within 30 days of notification. Payments shall be made
24 to claimants whose entitlement to benefits can be ascertained by
25 the fund, with or without proceedings before the appeals board.
26 Upon the assumption of obligations by the fund pursuant to the
27 director's determination, the fund shall have a right to immediate
28 possession of any posted security and the custodian, surety, or

1 issuer of any irrevocable letter of credit shall turn over the
2 security to the fund together with the interest that has accrued
3 since the date of the self-insured employer's default or
4 insolvency.

5 (d) The director shall promptly audit an employer *or group*
6 upon making a determination under subdivision (a) or (b). The
7 employer, any excess insurer *or reinsurer*, and any adjusting
8 agency shall provide any relevant information in their possession.
9 If the audit results in a preliminary estimate that liabilities exceed
10 the amount of the security deposit, the director shall direct the
11 custodian of the security deposit to liquidate it and provide all
12 proceeds to the Self-Insurers' Security Fund *or to the*
13 *Self-Insured Groups' Security Fund*. If the preliminary estimate
14 is that liabilities are less than the security deposit, the director
15 shall ensure the administration and payment of compensation
16 pursuant to subdivision (b).

17 (e) The payment of benefits by the Self-Insurers' Security
18 Fund *or the Self-Insured Groups' Security Fund* from security
19 deposit proceeds shall release and discharge any custodian of the
20 security deposit, surety, any issuer of a letter of credit, and the
21 self-insured employer, from liability to fulfill obligations to
22 provide those same benefits as compensation, but does not
23 release any person from any liability to the fund for full
24 reimbursement. Payment by a surety constitutes a full release of
25 the surety's liability under the bond to the extent of that payment,
26 and entitles the surety to full reimbursement by the principal or
27 his or her estate. Full reimbursement includes necessary attorney
28 fees and other costs and expenses, without prior claim or
29 proceedings on the part of the injured employee or other
30 beneficiaries. Any decision or determination made, or any
31 settlement approved, by the director or by the appeals board
32 under subdivision (g) shall conclusively be presumed valid and
33 binding as to any and all known claims arising out of the
34 underlying dispute, unless an appeal is made within the time limit
35 specified in Section 5950.

36 (f) The director shall advise the Self-Insurers' Security Fund
37 *or the Self-Insured Groups' Security Fund* promptly after receipt
38 of information indicating that a private self-insured employer *or*
39 *group* may be unable to meet its compensation obligations. The
40 director shall also advise the Self-Insurers' Security Fund *or the*

1 *Self-Insured Groups' Security Fund* of all determinations and
2 directives made or issued pursuant to this section.

3 (g) Disputes concerning the posting, renewal, termination,
4 exoneration, or return of all or any portion of the security deposit,
5 or any liability arising out of the posting or failure to post
6 security, or adequacy of the security or reasonableness of
7 administrative costs, including legal fees, and arising between or
8 among a surety, the issuer of an agreement of assumption and
9 guarantee of workers' compensation liabilities, the issuer of a
10 letter of credit, any custodian of the security deposit, a
11 self-insured employer *or group*, or the Self-Insurers' Security
12 Fund *or the Self-Insured Groups' Security Fund* shall be resolved
13 by the director. An appeal from the director's decision or
14 determination may be taken to the appropriate superior court by
15 petition for writ of mandate. Payment of claims from the security
16 deposit or by the Self-Insurers' Security Fund *or the Self-Insured*
17 *Groups' Security Fund* shall not be stayed pending the resolution
18 of the disputes unless and until the superior court issues a
19 determination staying a payment of claims decision or
20 determination of the director.

21 SEC. 2. Article 2.3 (commencing with Section 3737) is added
22 to Chapter 4 of Part 1 of Division 4 of the Labor Code, to read:

23
24 Article 2.3. Private Self-Insurance Group Security Act
25

26 3737. This article shall govern the establishment and
27 regulation of any group of private employers formed for the
28 purpose of self-insuring the obligation and liability of members
29 to pay compensation as required under this division.

30 3737.1. (a) Any employers seeking or possessing authority to
31 operate as a private self-insured group shall apply for a certificate
32 of consent to self-insure from the director.

33 (b) Any employers seeking a certificate of consent to
34 self-insure as a private self-insured group shall be required to
35 provide and maintain certified independently audited financials
36 for as many of the group's founding members as is necessary to
37 evidence a minimum consolidated net worth of the group
38 members of five million dollars (\$5,000,000) and a minimum
39 consolidated net income of the group members of five hundred
40 thousand dollars (\$500,000). After the self-insured group reaches

1 and maintains these levels, any additional new members shall not
2 be required to provide these financials. Instead, the
3 administrators of the group shall evaluate the finances of the
4 potential new members by reviewing their financial statements,
5 tax returns, credit reports, or other appropriate documentation as
6 specified in the bylaws of the self-insured group.

7 (c) Any employers seeking a certificate of consent to
8 self-insure as a private self-insured group shall be required to
9 demonstrate to the satisfaction of the department that they meet
10 the criteria of Section 3737.2.

11 (d) Any employers seeking a certificate of consent to
12 self-insure as a private self-insured group shall be required to
13 post and maintain a security deposit in a form acceptable to the
14 director and in an amount described in Section 3737.3.

15 (e) Any employers seeking a certificate of consent to
16 self-insure as a private self-insured group shall each agree to
17 assume and discharge, jointly and severally, any compensation
18 liability under this division and under Section 15479 of Title 8 of
19 the California Code of Regulations of any and all other
20 employers that are members of the self-insured group.

21 (f) Any employers seeking a certificate of consent to
22 self-insure as a private self-insured group shall be required to
23 provide one of the following:

24 (1) An independent evaluation of the applicant group's injury
25 and illness prevention program as set forth in Sections 6314.5
26 and 6401.7, and Section 3203 of Title 8 of the California Code of
27 Regulations, prepared by an independent, licensed, California
28 professional engineer, certified safety professional, or certified
29 industrial hygienist. The evaluation preparer shall disclose to the
30 director if any of the following is true:

31 (A) The preparer or the preparer's firm has had business
32 dealings with group member employers or their owners during
33 the prior two years.

34 (B) The preparer is or has been employed by the present or
35 prior insurance carrier or insurance broker for any member of the
36 self-insured group during the past five years.

37 (C) The preparer or preparer's firm has been employed by a
38 member employer or its parent in a safety and health or accident
39 prevention capacity during the past five years.

(2) A written report or citation of a Division of Occupational Safety and Health inspection of the applicant group's injury and illness prevention program pursuant to Sections 6314.5 and 6401.7, and Section 3203 of Title 8 of the California Code of Regulations. The Division of Occupational Safety and Health inspection shall have been conducted within 120 days of the date of application to become self-insured.

(g) The business relationships disclosed pursuant to paragraph (1) of subdivision (f) may be considered by the director but shall not alone constitute conflicts of interest, nor shall they disqualify an individual from being an independent professional as required by that paragraph.

(h) Every group shall maintain an effective injury prevention program. An evaluation report pursuant to subdivision (f) that shows the applicant for a certificate of consent to self-insure to be without an effective injury prevention program shall be good cause for denial of the application for self-insurance by the director without prejudice to reapply at a later date.

(i) An employer applicant to a private self-insured group must abate all serious violations found in the safety and health evaluation report. Written verification of abatement must be sent from the evaluation preparer to the department.

(j) An employer applicant to a self-insured group that is already established shall comply with the self-insured group's injury and illness prevention program.

3737.2. A private self-insured group may self-insure two or more employers that meet any of the following criteria:

(a) Are engaged in a common trade or business within the meaning of subdivision (b) of Section 11656.6 of the Insurance Code. Such a private self-insured group shall file with the department a statement that complies with the conditions set forth in paragraph (3) of subdivision (a) of Section 11656.6 of the Insurance Code.

(b) Are engaged in related activities in a given industry. Such a private self-insured group shall demonstrate the related nature of the member employers' business activities, to the satisfaction of the department, by filing with the department documentation establishing that:

(1) All member employers are classified within the same or a related Standard Industrial Classification Code Division

1 Structure as published in the United States Department of
2 Commerce's Standard Industrial Classification Code Manual or
3 the equivalent North American Industry Classification System
4 grouping, or share a predominant payroll classification.

5 (2) All member employers are members in good standing in an
6 industry-specific trade association that was not established for
7 the primary purpose of securing a certificate of consent to
8 self-insure from the department and that has been in existence for
9 at least five years prior to the application for consent to
10 self-insure.

11 (c) Have furnished other information, as required by the
12 director, demonstrating the employer members' common trade or
13 business or related activities in a given industry.

14 3737.3. (a) New private self-insured groups shall post and
15 maintain with the director a security deposit in a form acceptable
16 to the director and in an amount equal to the combined prior
17 three years of incurred losses of the founding members of the
18 group, subject to the statutory minimum established in
19 subdivision (b) of Section 3701.

20 (b) During the annual reporting process of the private
21 self-insured group, the director shall evaluate the funding status
22 and security of the group. If the director determines that the
23 security deposit is no longer proportional to the potential
24 exposure of the group as a result of an increase in membership or
25 loss experience, or as a result of a failure of the group to maintain
26 total assets in excess of its total liabilities, including the
27 actuarially estimated ultimate future claims liabilities, the
28 director shall immediately adjust the security deposit in the
29 amount of the deficiency. Should the director determine that the
30 security deposit is proportional to the size and loss experience of
31 the group, and that the group is adequately funded, no adjustment
32 to the security deposit shall occur.

33 3737.5. (a) A private self-insured group shall annually
34 demonstrate to the director that the group has a positive net worth
35 (assets of the self-insured group exceed the liabilities of the
36 self-insured group) based upon the group's audited financial
37 statements prepared by an independent, licensed certified public
38 accountant in accordance with generally accepted accounting
39 principles. The estimated ultimate future claims liabilities shall

1 be projected by an actuary who is a member of the Casualty
2 Actuarial Society.

3 (b) A private self-insured group shall establish rates based
4 upon projected claims and claim expenses as set forth by the
5 director in regulations.

6 (c) In the event that any private self-insured group fails to, at
7 all times, maintain assets in excess of its liabilities, the director
8 shall require the self-insured group to take reasonable and
9 necessary remedial action as the director may determine,
10 including, but not limited to:

11 (1) The submission by the self-insured group of a plan, with a
12 form and content acceptable to the director, for prompt correction
13 of the deficiency.

14 (2) A reevaluation of past member employer contribution rates
15 and a projected plan for future contribution rates for any period
16 of time that the department may require.

17 (3) The suspension of any addition of new members into the
18 self-insured group, the suspension of any distribution of
19 dividends or earnings on deposits or investments, or the
20 collection of all assessments or any portion thereof until the
21 self-insured group is deemed by the director to be capitalized in
22 accordance with this section.

23 (4) The reallocation of surplus self-insured group funds
24 collected in other calendar years, but that are unnecessary for the
25 payment of claims or expenses for the calendar year collected.

26 (5) The reallocation of investment earnings associated with
27 other calendar years, but not necessary for the payment of claims
28 or expenses in the calendar year in which the earnings are
29 associated.

30 (6) An immediate assessment upon the members of the
31 self-insured group.

32 (7) The required posting of additional security.

33 (8) An examination of the self-insured group's operations and
34 finances by an outside qualified professional such as an attorney,
35 actuary, certified public accountant, or other person or
36 organization.

37 (9) Any other action that the director may find appropriate in
38 order to promptly correct the deficiency.

39 (d) In the event that the director determines that the financial
40 stability of the self-insured group cannot be restored in a timely

1 and appropriate manner, after notice and opportunity for a
2 hearing, the director may appoint a conservator or liquidator to
3 manage the group. Appointment of a conservator or liquidator by
4 the director shall also be good cause to revoke the self-insured
5 group's certificate of consent to self-insure.

6 (e) In the event that the annual financial and actuarial reports
7 described in Section 3737.9 evidence a surplus of group moneys
8 in excess of the amount necessary to fund all obligations for a
9 given fund year, the group's board of trustees may declare excess
10 contributions, which may be refunded to the group's members in
11 an amount not to exceed 50 percent of the surplus no earlier than
12 36 months after the date the declaration of the board of trustees is
13 provided in writing to the director. An additional 25 percent of
14 the surplus for that fund year may be refunded to the group
15 members no earlier than 48 months after the date the declaration
16 of the board of trustees is provided in writing to the director, and
17 the remaining 25 percent of the surplus may be refunded to the
18 group members no earlier than 60 months after the date the
19 declaration of the board of trustees is provided in writing to the
20 director.

21 (f) The director shall adopt rules prescribing standards for the
22 investment of group funds.

23 3737.7. Every private self-insured group shall have and
24 maintain in full force a specific excess workers' compensation
25 insurance policy or reinsurance contract issued by an admitted
26 casualty insurance carrier or reinsurer authorized to transact that
27 business in the state by the Department of Insurance. The specific
28 excess policy or reinsurance contract shall not have a minimum
29 retention level above one million dollars (\$1,000,000) per
30 occurrence and the policy or contract may not be cancelled or
31 renewed without prior written notice to the director and the
32 self-insured group at least 30 days prior to the date of
33 cancellation or nonrenewal by the carrier.

34 3737.9. (a) Each private self-insured group shall annually file
35 with the director the following reports, on or before July 1 of
36 each year:

37 (1) The group self-insurer's annual report as prescribed by the
38 director.

39 (2) Current financial statements for the group as a whole,
40 prepared by an independent certified public accountant in

1 accordance with generally accepted accounting principles, for the
2 preceding fiscal year.

3 (3) An actuarial report, certified by an independent qualified
4 actuary who is a member of the Casualty Actuarial Society. The
5 actuarial report shall include a projection of the self-insured
6 group's estimated ultimate future claims liabilities.

7 (4) A payroll report, filed by classification codes of the
8 Workers' Compensation Insurance Rating Bureau for each
9 member of the self-insured group and in aggregate, for the
10 preceding 12-month period and including the current total
11 number of employers participating in the group as well as the
12 current total number of employees for each employer. The
13 payroll report shall be accompanied by the final payroll audit of
14 the group, as submitted to the group's excess insurance carrier.

15 (b) Every three years, on or before July 1, each private
16 self-insured group shall file an audit of the outstanding claims
17 and reserves performed by a qualified independent claims
18 auditor.

19 (c) As necessary, the director may conduct a special audit to
20 evaluate a private self-insured group's financial health. In
21 circumstances where the director does not have the staff expertise
22 or other necessary resources to conduct this special audit, the
23 director may engage the services of a legal, financial, or other
24 qualified person or organization to conduct or assist in the audit.
25 In the event that outside professional services are utilized, any
26 costs incurred shall be borne and paid by the private self-insured
27 group under examination.

28 (d) The group administrator of a private self-insured group
29 shall immediately report to the director, in writing, any
30 information that materially alters any of the facts presented to the
31 director in the reports required by this section, that materially
32 alters the actuarial confidence of the group, or that indicates that
33 the self-insured group is no longer in compliance with the
34 statutory and regulatory requirements of the self-insurance
35 program.

36 (e) The group administrator of any private self-insured group
37 shall provide to the director a copy of any amendment or update
38 to the self-insured group's bylaws or underwriting guidelines that
39 pertains to the operations of the self-insured group.

1 (f) Private self-insured groups shall also be required to file any
2 additional reports that may be deemed necessary by the director.

3 3737.11. All admittances of new member employers to private
4 self-insured groups shall be in accordance with the following
5 provisions:

6 (a) A private self-insured group may admit a new member
7 employer upon submitting to the department a completed
8 application, as prescribed by the director, for an interim
9 certificate of consent to self-insure at least 10 business days prior
10 to the effective date of coverage. The employer applicant to the
11 private self-insured group shall be deemed self-insured and
12 approved by the director on the effective date of coverage
13 requested under the interim certificate of consent to self-insure
14 unless the application is denied in writing by the director within
15 10 business days of receipt of the application. The member shall
16 be self-insured from the effective date of coverage requested
17 through the date of denial by the director. Coverage under the
18 self-insured group shall continue as set forth in subdivision (b).

19 (b) The department shall review and act upon an application
20 for a certificate of consent to self-insure from a new member to a
21 private self-insured group within 179 days from the effective date
22 of coverage and shall, within that period, issue a written approval
23 or denial of the new member's application. If the department
24 denies the new member's application for a certificate of consent
25 to self-insure, that employer shall leave the group and provide
26 proof of alternate coverage to the director and to the group no
27 later than 60 days after receiving notice of denial of the
28 application. Until the effective date of the alternate coverage, the
29 self-insured group shall remain liable for all compensation
30 liabilities of the employer. In no event shall the private
31 self-insured group be responsible for the employer's
32 compensation liabilities for injuries that occur more than 60 days
33 after the employer received notice of the denial of the application
34 for a certificate of consent to self-insure. The employer shall
35 remain liable for the payment of contributions and assessments
36 into the private self-insured group for the employer's period of
37 coverage as a member of the group.

38 (c) The director shall notify the Labor Commissioner of any
39 employer that was granted membership in a private self-insured
40 group, was subsequently denied a certificate of consent to

1 self-insure by the director, and, after 45 days from the denial, has
2 yet to provide to the director proof of coverage for workers'
3 compensation liabilities in the form of a binder, certificate of
4 insurance, or policy.

5 (d) At the discretion of the director, the department may
6 request the financial statements of any employer applicant to a
7 self-insured group if that employer's contributions to the group
8 during the first year of membership would comprise 25 percent
9 or more of the group's total contributions for that same year.

10 (e) Any employer that joins a private self-insured group shall
11 maintain its membership in the group for a minimum of one year
12 unless its membership is terminated under the provisions of
13 Section 3737.11 or 3737.12.

14 3737.12. (a) (1) No member of a private, self-insured group
15 may be involuntarily canceled or terminated from membership in
16 a group self-insurer unless at least 15 calendar days' advance
17 written notice has been provided to the group member and to the
18 director. The notice of involuntary cancellation or termination
19 from the self-insured group shall take effect 30 calendar days
20 after the date of the written notice to the director and the
21 employer, unless a later date is contained in the notice from the
22 self-insured group.

23 (2) In the case of involuntary cancellation or termination of
24 membership of a member, the self-insured group shall remain
25 liable for all compensation liabilities of the group member
26 resulting from any claim with a date of injury during the period
27 of membership in the group self-insurer, up to the effective date
28 of the involuntary termination or cancellation. The group
29 member shall remain liable for the payment of any contributions
30 or assessments to the self-insured group relating to the period of
31 the employer's membership.

32 (3) Notwithstanding paragraph (2), the following provisions
33 apply in the case of the involuntary cancellation or termination of
34 membership of a member of a self-insured group:

35 (A) The self-insured group's liability for a member's claims
36 shall stop on the date of the member's coverage under a standard
37 workers' compensation policy issued by an admitted carrier.

38 (B) A current or former group member's claims may be
39 transferred to a carrier as set forth in subdivision (c) of Section
40 3702.8 under a special excess workers' compensation policy.

1 (C) A current or former group member's claims may be
2 transferred to another private self-insured group if the bylaws of
3 the two groups permit the transfer and the transfer is approved by
4 the director.

5 (D) A current or former group member's claims may be
6 transferred to the member if the bylaws of the group self-insurer
7 permit the transfer, the member has possession of an individual
8 certificate of consent to self-insure issued by the director, and the
9 transfer has been approved by the director.

10 (4) Notice to the director of cancellation or termination of a
11 group member from a private self-insured group as set forth in
12 paragraph (1) shall be good cause for summary revocation of the
13 affiliate certificate issued to the group member on the applicable
14 date under paragraph (3) or the cancellation or termination date
15 under paragraph (1).

16 (5) Any group member leaving a self-insured group shall
17 provide proof of workers' compensation coverage to the director
18 and to the self-insured group within 45 days after the notice of
19 cancellation or termination, whether the notice is from the
20 self-insured group or the group member. The director shall notify
21 the Labor Commissioner of any employer that voluntarily or
22 involuntarily leaves a private self-insured group and that has
23 failed to provide proof of coverage for workers' compensation
24 liabilities in the form of a binder, certificate of insurance, or
25 policy to the director within 45 days after the notice of
26 cancellation or termination.

27 (b) (1) Any member of a self-insured group may withdraw
28 from the group and obtain alternate coverage after providing at
29 least 30 days' advance written notice of its intent to voluntarily
30 withdraw its participation in the group to the self-insured group's
31 administrator and the director.

32 (2) The self-insured group shall remain liable for all
33 compensation liabilities of any group member resulting from any
34 claim with a date of injury during the period of membership in
35 the group self-insurer, including the 30-day notice period
36 required for voluntary withdrawal of membership. The group
37 member shall remain liable for the payment of any contributions
38 and assessments to the self-insured group for the period of the
39 employer's membership in the group self-insurer.

1 3737.14. (a) Each self-insured group's application for a
2 certificate of consent to self-insure from the director shall be
3 accompanied by a filing on the part of the group administrator
4 setting forth all of the following information:

5 (1) The names and addresses of each of the officers, directors,
6 and general managers of the group administrator.

7 (2) Evidence of experience in the administration of group
8 insurance or self-insured groups.

9 (3) Two professional references associated with recent group
10 administration experience or other relevant experience.

11 (4) If incorporated in California, a certificate of incorporation,
12 or, if not incorporated, or incorporated in a state other than
13 California, proof of an actual place of business where contact
14 may be made and legal service, if necessary, may be
15 accomplished.

16 (5) Evidence of a fidelity bond and a professional liability
17 insurance policy in amounts and forms approved by the director.

18 (b) The director shall have the authority to undertake
19 reasonable and necessary action to ensure that the group
20 administrator's credentials and operations are within acceptable
21 industry standards.

22 3737.15. (a) No claims administrator of a private group
23 self-insurer, or employee, officer, or director of such a claims
24 administrator, shall be an employee, officer, or director of, or
25 have either a direct or indirect management or financial interest
26 in, the group administrator of the same private group self-insurer.

27 (b) No group administrator of a private self-insured group, or
28 employee, officer, or director of the group administrator, shall be
29 an employee, officer, or director of, or have either a direct or
30 indirect management or financial interest in, the claims
31 administrator serving that private self-insured group.

32 (c) No group administrator or claims administrator of a private
33 self-insured group shall also serve as the independent certified
34 public accountant for the same private self-insured group.

35 (d) No member, employee, officer, or director of the board of
36 trustees of a private self-insured group shall be an employee,
37 officer, or director of, or have a direct or indirect management or
38 financial interest in, the group's claims administrator, group
39 administrator, or independent certified public accountant.

1 3737.16. The director shall adopt reasonable rules and
2 regulations as necessary to effectuate the provisions of this
3 article. The regulations shall include, but not be limited to, the
4 establishment of appropriate application fees and administrative
5 assessments to fund the oversight of the group self-insurance
6 program.

7 SEC. 3. Section 3741.1 is added to the Labor Code, to read:

8 3741.1. As used in this article, "Self-Insurers' Security Fund"
9 includes both the Self-Insurers' Security Fund for private
10 self-insured employers and the Self-Insured Groups' Security
11 Fund for groups of private self-insured employers.

12 SEC. 4. Section 3748 is added to the Labor Code, to read:

13 3748. (a) For the exclusive purpose of ensuring the full
14 payment of private self-insured group members' obligations
15 under this division, there shall be established, in like manner as
16 the Self-Insurers' Security Fund established pursuant to Section
17 3742, a Self-Insured Groups' Security Fund. The Self-Insurers'
18 Security Fund and the Self-Insured Groups' Security Fund shall
19 at all times be maintained as two distinct funds, and the moneys
20 and other assets in each shall not be commingled or used to pay
21 claims from the other. Any risk that transfers from the
22 Self-Insurers' Security Fund to the Self-Insured Groups' Security
23 Fund shall become the exclusive obligation of the Self-Insured
24 Groups' Security Fund, and the Self-Insurers' Security Fund
25 shall retain no liability for that risk. The Self-Insured Groups'
26 Security Fund shall begin providing coverage to its members on
27 or before July 1, 2007, upon approval from the director of one of
28 the following:

29 (1) A financial plan prepared by an independent actuary who
30 is a member of the Casualty Actuarial Society that demonstrates
31 an assessment base sufficiently large to insure the payment of
32 benefits to employees of a defaulting group.

33 (2) An alternative security plan whereby all eligible private
34 group self-insureds shall collectively secure the aggregate
35 incurred liabilities of the eligible group through a combination of
36 cash and securities, surety bonds, irrevocable letters of credit,
37 insurance, or other financial instruments or guarantees sufficient
38 to meet the security requirements set by the director.

39 (b) The Self-Insured Groups' Security Fund shall submit a
40 plan for the director's approval no later than April 1, 2007. Until

1 the director approves either a financial plan or an alternative
2 security plan as described in paragraphs (1) and (2), all
3 self-insured groups shall remain members of the Self-Insurers'
4 Security Fund.

5 (c) Whenever the director, pursuant to Section 3701.5, shall so
6 order, the Self-Insured Groups' Security Fund shall assume the
7 liabilities of a private group self-insurer and make payments from
8 the Self-Insured Groups' Security Fund. The Self-Insured
9 Groups' Security Fund shall secure reimbursement therefor from
10 any and all member employers of the private self-insured group.

11 (d) Assessments into the Self-Insured Groups' Security Fund
12 shall be made by each private self-insured group. These
13 assessments shall be calculated in accordance with a formula
14 determined by the board of trustees of the Self-Insured Groups'
15 Security Fund as a percentage of the contributions received by
16 the group from its members for the prior year, but not to exceed
17 2 percent of the aggregate contributions. Funds obtained by these
18 assessments may be used only for the purposes of this section.

19 (e) Self-Insured Groups' Security Fund assessments provided
20 for in subdivision (d) may be assessed annually upon each
21 private self-insured group, as determined to be necessary by the
22 board of trustees of the Self-Insured Groups' Security Fund.

23 SEC. 5. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety
25 within the meaning of Article IV of the Constitution and shall go
26 into immediate effect. The facts constituting the necessity are:

27 In order to reduce workers' compensation costs to employers
28 as quickly as possible, it is necessary that this act take effect
29 immediately.